

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

Robert A. Magnanini (RM 7356)  
BOIES, SCHILLER & FLEXNER LLP  
150 John F. Kennedy Parkway  
Short Hills, New Jersey 07078  
(973) 218-1111  
Attorneys for Plaintiff  
Walsh Securities, Inc.

WALSH SECURITIES, INC.,	:	Civil Action No. 97-3496 (SDW)
	:	
Plaintiff,	:	
	:	
v.	:	<b>DECLARATION OF</b>
	:	<b>ROBERT A. MAGNANINI</b>
	:	<b>IN SUPPORT OF REQUEST FOR</b>
CRISTO PROPERTY MANAGEMENT,	:	<b>CLERK'S ENTRY OF DEFAULT</b>
Ltd., et al.,	:	<b>AGAINST CERTAIN</b>
	:	<b>PRO SE DEFENDANT CORPORATIONS</b>
Defendants.	:	
	:	

I, ROBERT A. MAGNANINI, do hereby declare:

1. I am a Partner in the firm Boies, Schiller & Flexner LLP, counsel to Plaintiff Walsh Securities, Inc. ("WSI") in this matter, and submit this Declaration in support of WSI's request pursuant to Fed. R. Civ. P. 55(a) for entry of default as to certain *pro se* Defendant corporations for failure to plead as to WSI's Third Amended Complaint and failure to comply with Court Orders instructing Defendants Cristo Property Management Ltd, a/k/a/ G.J.L. Limited, DEK Homes of New Jersey, Inc., Oakwood Properties, Inc., Capital Assets Property Management & Investment Co., Inc., Capital Assets Property Management, L.L.C., and DAP Consulting, Inc. (collectively, "Defendant corporations") that they could not continue to appear *pro se*.

2. On January 31, 2005, Walsh Securities filed a Third Amended Complaint against all of the defendants.

3. Based upon the Court files and records in this action and upon my personal knowledge of the proceedings herein, I state the following with respect to each defendant as to which WSI seeks an entry of default:

4. **Cristo Property Management Ltd., a/k/a G.J.L Limited;  
DEK Homes of New Jersey ;  
Oakwood Properties, Inc.;  
Capital Assets Property Management & Investment Co.; and  
Capital Assets Property Management LLC.**

- a. Attached hereto as Exhibit A is a true and correct copy of a February 17, 2005 Order to Show Cause (filed May 18, 2005 as Docket Entry No. 152) signed by U.S. Magistrate Judge Madeline Cox Arleo setting forth that, as corporate entities, Cristo Property Management Ltd, a/k/a/ G.J.L. Limited, DEK Homes of New Jersey, Inc., Oakwood Properties, Inc., Capital Assets Property Management & Investment Co., Inc. ("CAPMI") and Capital Assets Property Management, L.L.C. ("CAPM") cannot appear *pro se* and ordering that "[i]f counsel has not entered an appearance on behalf of . . . [said defendants]. . . by June 1, 2005, I will ask Judge Bassler to strike their answer and enter default against them."
- b. No counsel has ever made an appearance on behalf of said Defendants since February 17, 2005.

5. **DAP Consulting, Inc.**

- a. Attached hereto as Exhibit B is a true and correct copy of a March 2, 2005 Letter Order (filed March 4, 2005 as Docket Entry No. 123) signed by U.S.

Magistrate Judge Madeline Cox Arleo setting forth that, as a corporate entity, DAP Consulting, Inc. cannot appear *pro se* and ordering that “[i]f counsel has not entered an appearance on behalf of DAP Consulting by **March 28, 2005**, I will ask Judge Bassler to strike its Answer and enter default against it.” (emphasis in original).

- b. Attached hereto as Exhibit C is a true and correct copy of a March 19, 2005 Letter (apparently not filed on the Docket) from Anthony D’Apolito, the owner of DAP Consulting, Inc., to Magistrate Judge Arleo stating, at page 2, that counsel would not be retained for DAP Consulting, Inc.
- c. No counsel has ever made an appearance on behalf of DAP Consulting, Inc. since March 2, 2005.

6. As detailed above, the time set for each of the defaulting *pro se* Defendant corporations to retain counsel and answer or otherwise respond to the Third Amended Complaint has elapsed.

I DECLARE UNDER PENALTY OF PERJURY that the foregoing is true and correct and that this Declaration was executed in Short Hills, New Jersey on this 22nd day of November, 2006.

By: \_\_\_\_\_

Robert A. Magnanini (RM 7356)

# **EXHIBIT A**

Case 2:97-cv-03496-SDW-MCA Document 152 Filed 05/18/2005 Page 1 of 2

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

CHAMBERS OF  
**MADELINE COX ARLEO**  
UNITED STATES MAGISTRATE JUDGE

MARTIN LUTHER KING COURTHOUSE  
50 WALNUT ST.  
ROOM 2060  
NEWARK, NJ 07101  
973-297-4903

May 17, 2005

**LETTER ORDER**

TO ALL COUNSEL ON ATTACHED LIST

**Re: Walsh Securities, Inc. V. Cristo Property Management, et al.  
Civil Action No. 97-3496 (WGB)**

Dear Counsel:

Attorney Joseph V. Sorrentino has moved for leave to withdraw as counsel for defendants Cristo Property Management, Ltd., a/k/a G.J.L. Limited, DEK Homes of New Jersey, Inc., Oakwood Properties Inc., National Home Funding, Inc., Capital Assets Property Management & Investment Co., Inc., Capital Assets Property Management, L.I.C., and William Kane. I have considered the papers in support of the motion. No papers were filed in opposition to the motion.

This Court finds that good cause exists within the contemplation of R.P.C. 1.16(b)(6) for withdrawal of counsel from this case. Accordingly, the motion for leave to withdraw is granted. Mr. Sorrentino is further ordered to provide his clients with copies of this Order.

All defendants (except Mr. Kane) are corporate entities. Under the law, they must be represented by a member of the bar. If counsel has not entered an appearance on behalf of Cristo Property Management, Ltd., a/k/a G.J.L. Limited, DEK Homes of New Jersey, Inc., Oakwood Properties Inc., National Home Funding, Inc., Capital Assets Property Management & Investment Co., Inc., Capital Assets Property Management, L.I.C. (Mr. Kane can appear pro se) by June 1, 2005, I will ask Judge Bassler to strike their answer and enter default against them.

All parties are directed to appear before the Court for a status conference on **June 7, 2005**  
**at 2:00 p.m.**

**SO ORDERED.**

*s/Madeline Cox Arleo*

**MADELINE COX ARLEO**

**United States Magistrate Judge**

cc: Clerk  
Hon. William G. Bassler, U.S.D.J.  
All Parties  
File

Case 2:97-cv-03496-SDW-MCA Document 152 Filed 05/18/2005 Page 2 of 2

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# **EXHIBIT B**

Case 2:97-cv-03496-SDW-MCA Document 123 Filed 03/04/2005 Page 1 of 2

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

CHAMBERS OF  
MADELINE COX ARLEO  
UNITED STATES MAGISTRATE JUDGE

MARTIN LUTHER KING COURTHOUSE  
50 WALNUT ST.  
ROOM 2060  
NEWARK, NJ 07101  
973-297-4903

March 2, 2005

Charles J. Uliano, Esq.  
Chamlin, Rosen, Uliano & Witherington  
268 Norwood Avenue  
P.O. Box 38  
West Long Branch, NJ 07764

**LETTER ORDER**

**Re: Walsh Securities, Inc. v. Cristo Property Management Ltd., et al.**  
**Civil Action No.: 97-3496 (WGB)**

Dear Mr. Uliano:

This Court is in receipt of your Motion for Leave to Withdraw as Counsel for Defendants Anthony D'Appolito and DAP Consulting, Inc., filed on behalf of yourself and the law firm of Chamlin, Rosen, Uliano & Witherington. I have considered the papers in support of this Motion. Plaintiff does not oppose the Motion.

This Court finds that good cause exists within the contemplation of R.P.C. 1.16(b) for withdrawal of counsel from this case. Accordingly, the Motion for Leave to Withdraw as Counsel is **granted**. You are hereby ordered to provide your clients with copies of this Order.

The parties to this action are ordered to appear for a Show Cause hearing and Rule 16 Scheduling Conference on **March 28, 2005 at 2:00 p.m.** If Mr. D'Appolito does not secure new counsel and an appearance is not entered by the March 28, 2005 conference, he will be deemed to be proceeding on a pro se basis. DAP Consulting, on the other hand, is a corporate entity. Under the law, it must be represented by a member of the bar. Simbraw, Inc. v. United States, 367 F.3d 373 (3d. Cir. 1966). If counsel has not entered an appearance on behalf of DAP Consulting by **March 28, 2005**, I will ask Judge Bassler to strike its Answer and enter default against it.

**SO ORDERED.**

s/Madeline Cox Arleo  
**MADELINE COX ARLEO**  
United States Magistrate Judge

cc: Hon. William G. Bassler, U.S.D.J.  
Clerk  
All parties  
File



Case 2:97-cv-03496-SDW-MCA Document 123 Filed 03/04/2005 Page 2 of 2

# EXHIBIT C

3/19/05

**ANTHONY D'APPOLIT  
909 WOODLAND AVENUE  
WALL TOWNSHIP, NEW JERSEY 07719  
TELEPHONE: (732) 556-6240**

March 19, 2005

Honorable Madeline Cox Arleo, U.S.M.J.  
United States District Court  
District of New Jersey  
Martin Luther King Court House  
50 Walnut Street  
Newark, New Jersey 07101

Charles J. Uliano, Esq.  
CHAMLIN, ROSEN, ULIANO & WITHERINGTON  
268 Norwood Avenue  
West Long Branch, New Jersey 07764

RE: Walsh Securities, Inc. v. Christo Property Management, Ltd., et  
als.  
Civil Action No.: 97-3496(WGB)

Dear Judge Cox and Mr. Uliano:

I am in receipt of the Court's March 2, 2005 "Letter Order" (copy enclosed) and Mr. Uliano's letter to me dated March 14, 2005 (copy enclosed) regarding the above matter.

As you both are aware, I am a defendant individually and a company that I owned, DAP Consulting, which company is now insolvent with no assets, is also named as a defendant. Formal Answers were previously filed as to both me and DAP Consulting by Mr. Uliano. I am aware that Mr. Uliano seeks to be relieved as counsel as to both me individually and DAP Consulting. I am also aware that I may represent myself individually in a pro se capacity, but that any defense of the company DAP Consulting must be through an attorney.

To this end, by copy of this letter to Mr. Uliano I am sending him an executed Substitution of Attorney form allowing me to now represent myself individually pro se which I would ask that he sign and forward to the Clerk for filing. I have previously filed an individual petition under Chapter 7 of the United States Bankruptcy Code which resulted in a formal discharge. I listed the

Page 2 of 2

plaintiff's claims in the above matter in that petition. It is my understanding that as a matter of law the plaintiff's claims against me individually have been formally discharged as a result of my bankruptcy filing, and I am now in the process of obtaining copies of the discharge Order to forward to the Court. In the interim, I will be substituting in to represent myself individually as a pro se party.

With regard to DAP Consulting, as noted, the company is insolvent and has no assets. As such, at this time I will not be retaining an attorney to defend that business entity. I am aware that the Court will likely strike the Answer previously filed and allow the entry of a default after March 28, 2005. I reserve the right to hire an attorney to contest any proofs that may be offered by the plaintiffs at any proof hearing that may be scheduled to take place against DAP Consulting.

Lastly, with regard to the Rule 16 Scheduling Conference set for March 28, 2005 at 2:00 p.m., I anticipate that I will have the proof that the plaintiff's claims were discharged in my bankruptcy before then. Upon receipt of same I will forward same to the Court which should conclude the matter as to me individually without the necessity of me appearing at the Scheduling Conference.

Thank you very much.

Respectfully submitted,

  
Anthony D'Appolito